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10/595,084	02/03/2006	Kazuhiro Yanagisawa	Q92943	2328

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EXAMINER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Response to Arguments

Applicants argue that their method of producing a rubber master batch yields improved homogeneity as compared to preparing the master batch according to the teaching of the prior art of record (Yanagisawa et al. and Lopez-Serrano Ramos et al.). To this end, applicants have submitted two Rule 1.132 Declarations showing the improved homogeneity that their method gives. The Table in the Declaration dated March 1, 2010 shows that use of the high shear mixer gives a more consistent honogeneity for the final master batch than when using the high shear mixer to produce only the filler slurry. However, while a better result is obtained, it is not unexpected. Any differences between the claimed invention and the prior art may be expected to result in some differences in properties. The issue is whether the properties differ to such an extent that the difference is really unexpected. *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Moreover, "[e]xpected beneficial results are evidence of obviousness of a claimed invention, just as unexpected results are evidence of unobviousness thereof." *In re Gershon*, 372 F.2d 535, 538, 152 USPQ 602, 604 (CCPA 1967). MPEP 716.02. In this case, one of ordinary skill in the art would have expected the use of a high shear mixer to give a more homogeneous result. The expectedness of this result is evidenced by Morris et al. (US 2004/0097631) filed November 5, 2002 which states that when dispersions are mixed under high shear conditions, a substantially uniform or homogeneous mixture is prepared (¶21). Therefore, these results are not unexpected. These results reinforce why one of ordinary skill in the art would have found it obvious to use a high shear mixer. However, if it could be shown that a high shear mixer could not have been used on the composition of Yanagisawa et al., that would provide evidence that it would not have been obvious to one of ordinary skill in the art to use a high shear mixer in that particular invention.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela C. Scott whose telephone number is (571) 270-3303. The examiner can normally be reached on Monday through Friday, 8:30am to 5:00pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo/
Supervisory Patent Examiner, Art Unit 1796

/A. C. S./
Examiner, Art Unit 1796
March 10, 2010